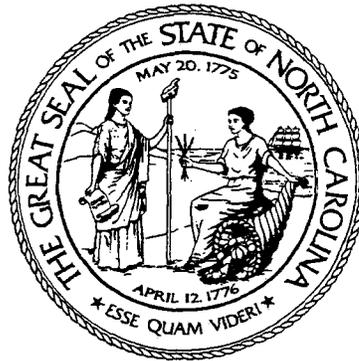


LEGISLATIVE RESEARCH COMMISSION

Bail Bond Laws Committee



REPORT TO THE
2000 SESSION OF THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

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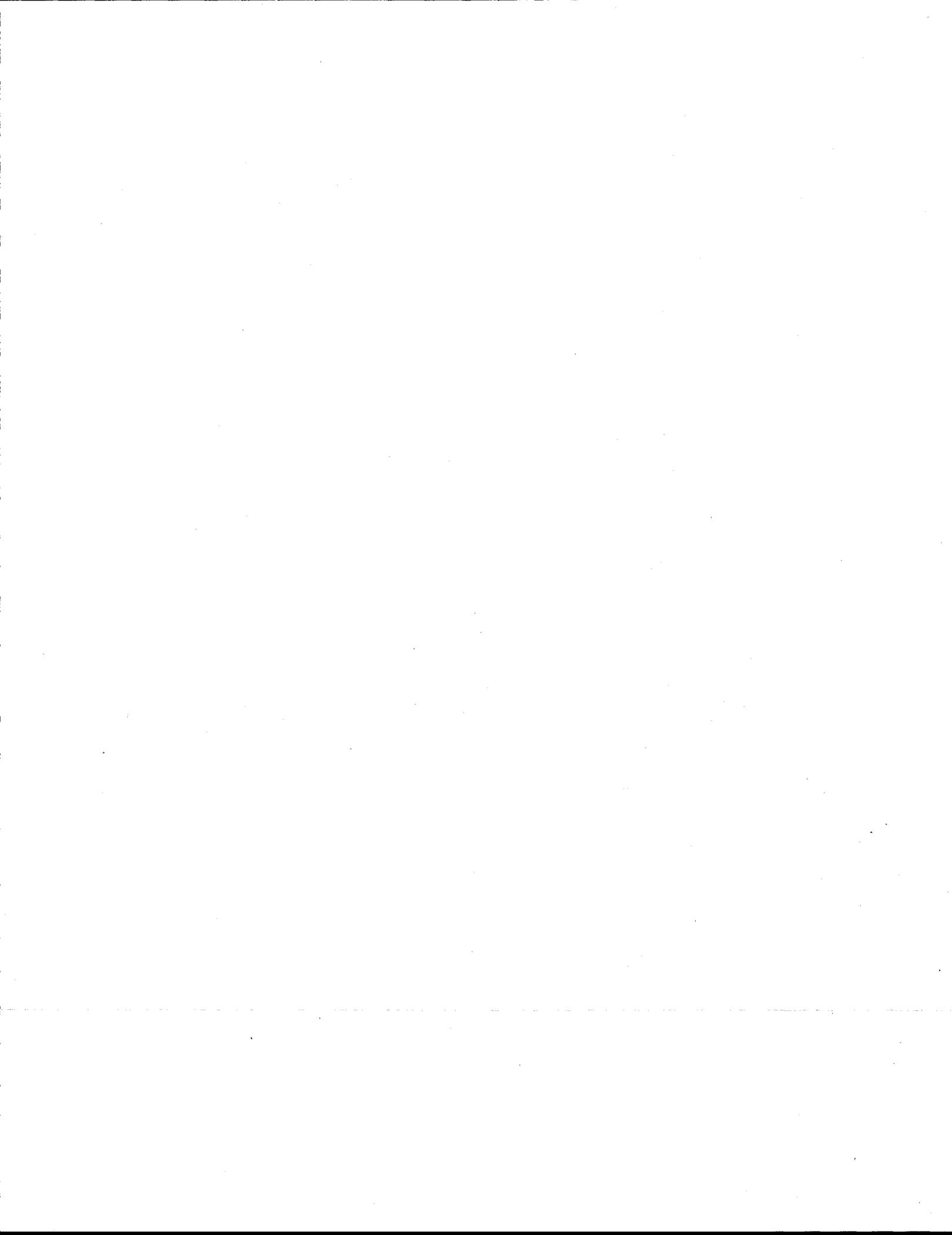
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601



May 4, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY (REGULAR SESSION 2000):

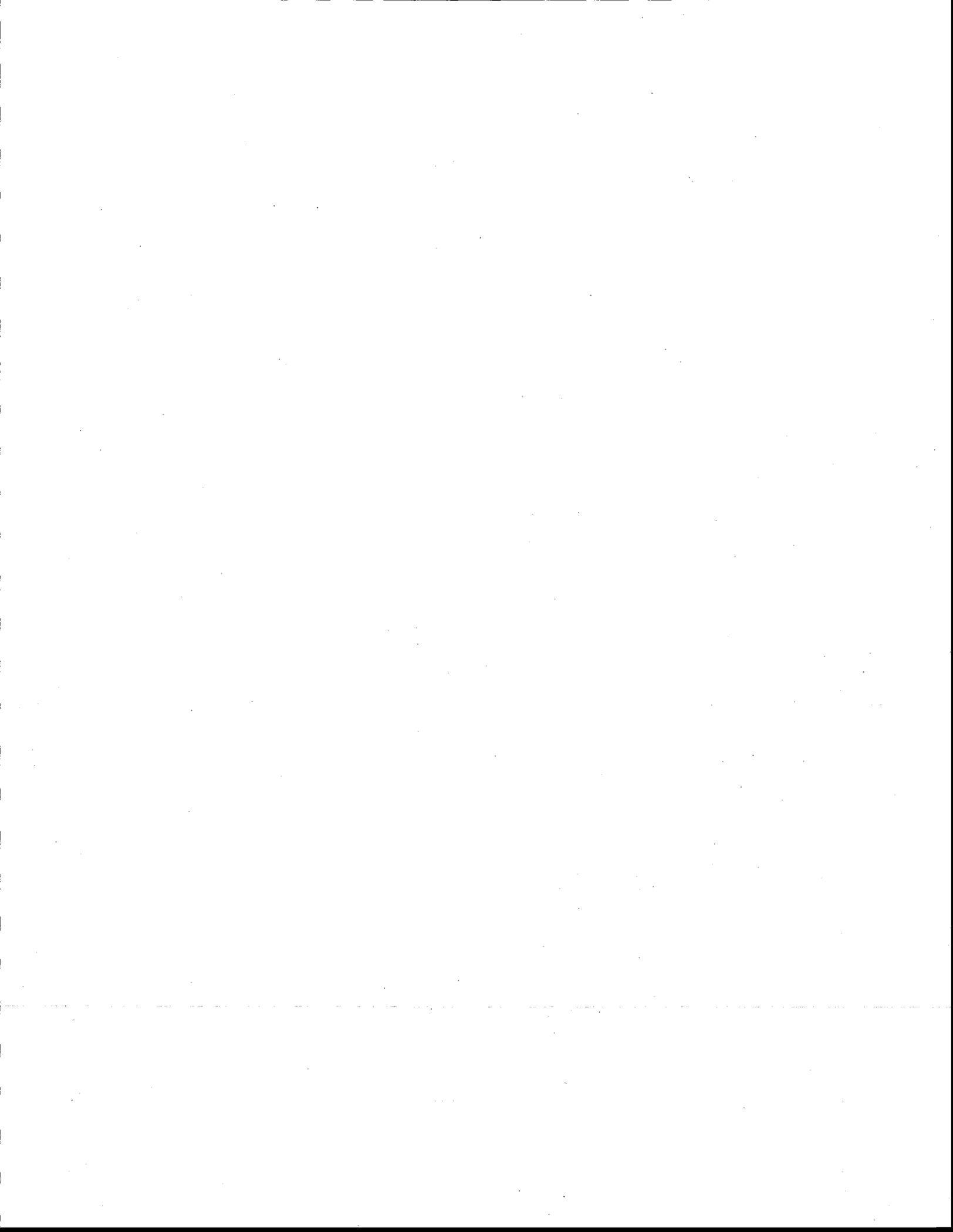
The Legislative Research Commission herewith submits to you for your consideration its 2000 final report on bail bond laws. The report was prepared by the Legislative Research Commission's Committee on Bail Bond Laws pursuant to G.S. 120-30.17(1).

Respectfully submitted,


James B. Black
Speaker of the House


Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission



1999 - 2000

LEGISLATIVE RESEARCH COMMISSION

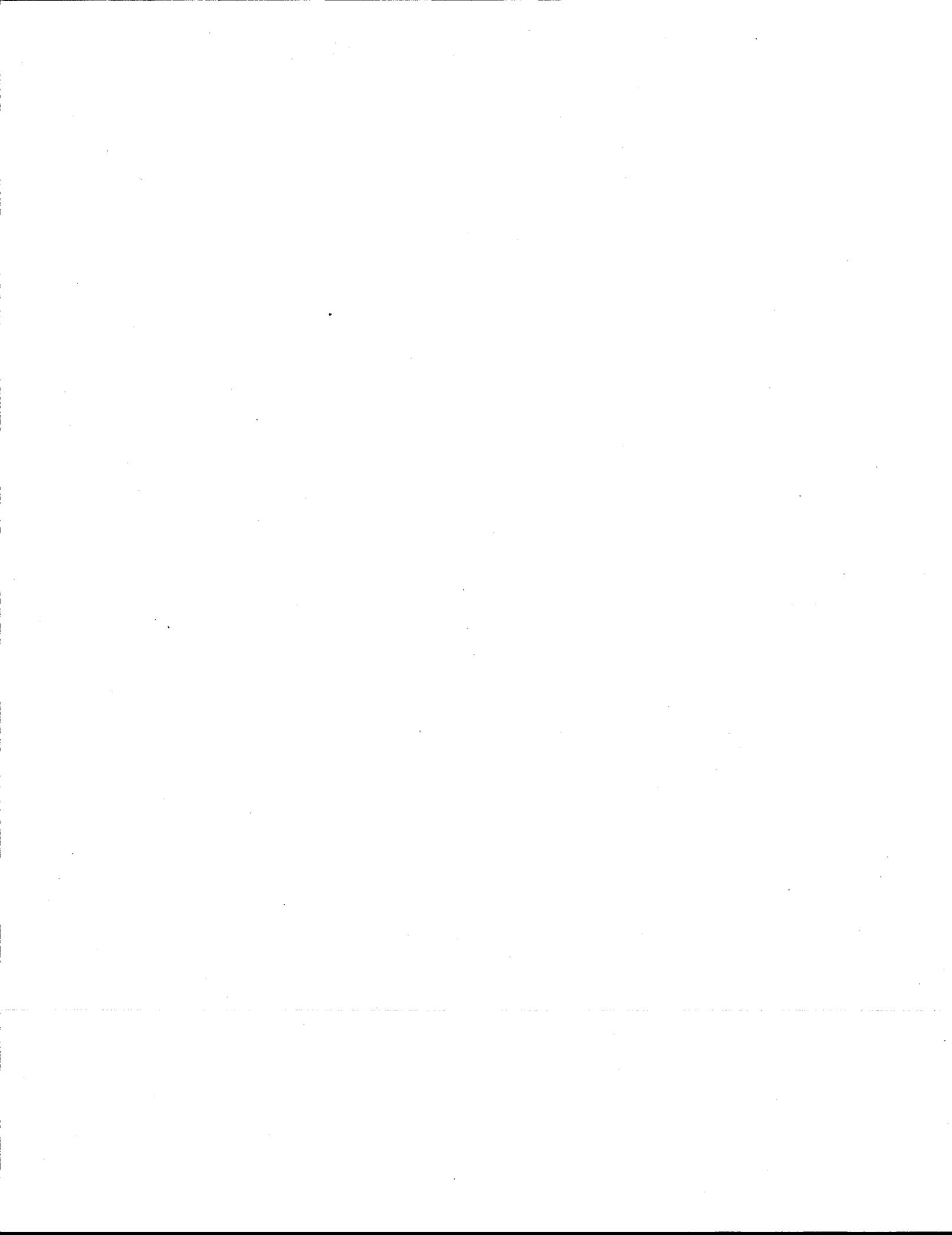
MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

Senator Austin M. Allran
Senator Linda D. Garrou
Senator Jeanne H. Lucas
Senator R.L. "Bob" Martin
Senator Ed N. Warren

Speaker of the House
of Representatives
James B. Black, Cochair

Rep. James W. Crawford, Jr.
Rep. Beverly M. Earle
Rep. Verla C. Insko
Rep. William L. Wainwright
Rep. Steve W. Wood



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1998 Session and 1999 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Bail Bond Laws was authorized by Section 2.1(11) of Chapter 395 of the 1999 Session Laws (Regular Session, 1999). Part II of Chapter 395 allows for studies authorized by that Part for the Legislative Research Commission to consider Senate Bill 994 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 395 and Senate Bill 994 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Criminal Laws issues area under the direction of Senator R.L. Martin. The Committee was chaired by Senator Dan Robinson and Representative William Culpepper, III. The full membership of the Committee is listed in Appendix B of this

report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

There were three meetings of the Bail Bond Laws Committee on December 9, 1999, February 10, 2000, and April 25, 2000.

December 9, 1999

Senator Martin, the Legislative Research Commission member, called the meeting to order and introduced the co-chairs, Senator Robinson and Representative Culpepper. Rep. Culpepper presided over the meeting.

The first speaker was Mr. Tom Andrews from the Administrative Office of the Courts (AOC). Mr. Andrews presented an overview of the bail bond laws in North Carolina and addressed the current problems and better ways to assure that criminal defendants appear in court when they are required to do so. Members requested that Mr. Andrews provide information on the custody release pilot program, provide figures on the number of failures to appear in court during a given period of time, and information on how many people are bonded out. A verbatim copy of Mr. Andrews' comments are available in the minutes in the Legislative Library.

The second speaker was Mr. Tom Keith, District Attorney from Forsythe County. Mr. Keith spoke on behalf of the NC Conference of District Attorneys and addressed the bail bond laws and processes defects he has observed in his last ten years of being a prosecutor. Members questioned Mr. Keith about the state and federal property bond statute. A verbatim copy of Mr. Keith's comments is available in the minutes in the Legislative Library.

The third speaker was Ms. Leanne E. Winner, the Director of Governmental Relations for the NC School Boards Association. Ms. Winner addressed the schools' involvement in this process and some of the problems with the current bail bond laws. Members questioned Ms. Winner about similar school/bail bond programs in other states. A verbatim copy of Ms. Winner's comments is available in the minutes in the Legislative Library.

The fourth speaker was Mr. Mike Mann of the North Carolina Bail Agents Association. Mr. Mann addressed the bail bond process and possible changes in the current law and procedure. Members questioned Mr. Mann about information required for a bail bondsman when he/she is determining whether or not to write a bond. A verbatim copy of Mr. Mann's comments is available in the minutes in the Legislative Library.

Speakers' handouts and comments are included in the minutes in the Legislative Library.

February 10, 2000

Senator Robinson, co-chair, called the meeting to order and recognized Representative Culpepper, co-chair, for remarks regarding the December 9, 1999 meeting of the committee. The new staff counsel, Mr. Al Andrews, was introduced. Mr. Andrews replaced Mr. Tim Hovis, who left the Research division.

The first speaker was Mr. Stevens Clarke, of the Institute of Government at the University of North Carolina at Chapel Hill. Mr. Clarke addressed the constitutionality of preventive detention, the system of pretrial release, and different forms of pretrial release. Members questioned Mr. Clarke as to reasons why people fail to appear in court and about the Hispanic population in regards to bail bonds. A verbatim copy of Mr. Clarke's comments is available in the minutes in the Legislative Library.

The second speaker was Ms. Jenifer Lakin, a Research Attorney from the Division of Legal Services of the Administrative Office of the Courts. Ms. Lakin presented an overview of the State Pretrial Release Program. A verbatim copy of Ms. Lakin's comments is available in the minutes in the Legislative Library.

The third speaker was Mr. Chuck Johnson, the Director of the Wake county Pretrial Release Program and a Past President of the Pretrial Services Association. Mr. Johnson explained how the Pretrial Release Program worked and addressed the problems of communicating with Hispanic defendants. Mr. Johnson also presented a grant proposal for

forming a state pretrial resource center in North Carolina. A verbatim copy of Mr. Johnson's comments is available in the minutes in the Legislative Library.

The fourth speaker was Mr. Angus Thompson, a Public Defender for District 16B (Robeson County), and President of the North Carolina Association of Public Defenders. Mr. Thompson commented on the costs of preventive detention, costs of court appearances, failures to appear, and the Criminal Justice Information Network (CJIN). CJIN provides information on a person that would be available to an arresting officer and judicial officials. A verbatim copy of Mr. Thompson's comments is available in the minutes in the Legislative Library.

The fifth speaker was Mr. Mann of the North Carolina Bail Agents Association. Mr. Mann commented that the Association had suggestions for the staff and committee, but would reserve comments until the Department of Insurance had an opportunity to present to the committee. A verbatim copy of Mr. Mann's comments is available in the minutes in the Legislative Library.

Representative Culpepper suggested the various parties involved in this issue meet outside the committee meetings to enable a consensus to be reached. Rep. Culpepper stated the committee is open to suggestions and concerns and asked the parties to present those to the committee staff.

Senator Robinson commented on the committee's primary focus on the forfeiture of bonds and suggested that due to the other arising issues, that he hopes all parties can agree on a resolution. Senator Robinson stated he would like to hear from clerks of court, magistrates, and perhaps jail managers.

Speakers' handouts and comments are available in the minutes in the Legislative Library.

April 25, 2000

Representative Culpepper called the committee meeting to order. The previous meeting's minutes were approved.

The first speaker was Mr. Tom Andrews, General Counsel, Legal Services Division of the AOC. Mr. Andrews moderated the working group of interested parties created at Rep. Culpepper's direction to identify various issues and suggestions for change to existing bail bond laws. The working group held two sessions, April 10 and April 20, 2000. The result of these sessions was a draft bill modernizing bail bond forfeiture laws. The draft bill was provided to committee members and explained by Mr. Andrews. The attached bill is a recodification of existing bail forfeiture law in General Statutes Chapter 15A, Article 26. The bill attempts to simplify outdated language and confusing procedures. Mr. Andrews explained the bill's language was the consensus of the working group, but acknowledged there are still areas where the interested parties desire change. After Mr. Andrews' presentation, a series of interested parties made statements.

Mr. John Kennedy of the Wake County Clerks of Superior Court stated his group's agreement with the draft bill and lauded the effort to produce it. Mr. Kennedy stated the bill was a major improvement on existing law, but he acknowledged there is still room for further modifications of existing law.

Ms. Leanne E. Winner, Director of Governmental Relations for the N.C. School Boards Association, indicated the bill's language was easier to interpret than current statutory language. She indicated school boards especially like the three-year statute of limitations on parties seeking

relief from a final judgement of forfeiture, as this would allow school boards to unfreeze received bail forfeiture funds.

Mr. Michael Mann, representing the N.C. Bail Agents Association, stated that conceptually, his group was please with the effort represented in the draft bill. He further stated his group wished it had more time to propose further changes to current law. Mr. Joe Shaw, a bail bondsman from Randolph County, assisted Mr. Mann in answering questions from committee members.

Mr. George Teague, representing the National Association of Bail Insurance Companies, stated his group's agreement with the bill language. He stated his group was most concerned with timely notice being provided to both the insurance company serving as a surety on a bond and the surety bondsman who wrote the bond. Ms. Rebecca Mercer, who represents Bankers Insurance Group, echoed Mr. Teague's remarks.

Mr. Mann requested the committee review and favorably recommend a draft bill which his group and the N.C. Department of Insurance had agreed upon. The attached bill, which was explained by Mr. Mann, creates a bail bondsmen and bail runner apprenticeship program and increases the minimum securities deposit required of professional bondsmen.

Mr. Fred Mohn of the N.C. Department of Insurance commented on additional sections of the bill discussed by Mr. Mann. These sections (1) increase the penalty from a misdemeanor to a Class I felony to act as a bail bondsman or runner without obtaining proper licensure through the Department of Insurance, (2) add felony punishment for willful failure to return collateral used to secure a bond, and (3) establish procedures to be followed when a bondsman become terminally ill or dies.

The committee recommended favorable approval of the two bills and that the draft report be finalized and forwarded to the Legislative Research Commission.

FINDINGS

After reviewing the presentations and discussions of the Committee regarding bail bond laws, the Committee makes the following findings:

- Individuals sometime engage in the bail bond business in different capacities without first obtaining the proper licensure
- Self-proclaimed bounty hunters operate in N.C.
- Current licensees employ or contract with unlicensed individuals to assist them in the apprehension and surrender of defendants to the courts.
- There has been an increase in the number of complaints about bail bondsmen not returning collateral security.
- The Department of Insurance has met with widows and other family members of a deceased or terminally ill licensed bail bondsman, who had very limited knowledge or understanding of the bail bond business, and so were unable to close out that book of business on behalf of a deceased or terminally ill bail bondsman.
- Current Bail Bond Forfeiture statutes used outdated language and mandate sometimes confusing or awkward procedures.
- Current statutes create solvable burdens on many entities who are involved in the bail bonding system. These entities include clerks of court, school boards, bondsmen, insurance companies, and the Department of Insurance.

RECOMMENDATIONS

Based upon its findings, the Committee makes the following recommendations:

- Increase the penalty for failure to return collateral security that exceeds \$1500.00 from a misdemeanor to a felony.
- Modernize procedure for forfeiting bail bonds
- Require supervision of first year bail bondsmen and runners
- Make it a Class I felony for a person to act as a runner or bail bondsman without obtaining and maintaining the require license

- Require that collateral security in the form of cash or negotiable instruments be held in trust accounts
- Provide for the disposition of outstanding bail bond obligations upon the death or terminal illness of a bail bondsman
- Increase the minimum securities deposit required of professional bondsmen
- Redraft the language of existing Bail Bond Forfeiture statutes to modernize and clarify it
- Use the term “defendant” instead of the arcane term “principal” to describe the subject of the bail bond
- Establish clear procedures for the entry and finalization of provisional judgments of bail forfeiture
- Provide for notice to both bail agents and insurance companies who serve as sureties on bail bonds
- Provide a three year statute of limitations on motions seeking relief from final judgments of forfeiture

Based on these findings, the Bail Bond Laws Committee finds there is a great need for revised bail bond laws legislation and recommends the legislation in Appendix A to the 2000 General Assembly for consideration during the 2000 Short Session.

APPENDIX A

CHAPTER 395
1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

...

(11) Criminal laws issues:

- a. Prohibiting death sentence for mentally retarded persons (S.B. 334 - Ballance).
- b. Prohibiting death sentence obtained on basis of race (S.B. 991 - Ballance).
- c. Bail bond laws (S.B. 994 - Odom, Ballantine; H.B. 1219 - BADDOUR).

...

Section 2.2. Committee Membership. -- For each Legislative Research Commission committee created during the 1999-2001 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Section 2.3. Reporting Date. -- For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1999 General Assembly, 2000 Regular Session, or the 2001 General Assembly.

Section 2.4. Funding. -- From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified. In the General Assembly read three times and ratified this the 21st day of July 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

APPENDIX B

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 994

Short Title: Amend Bail Bond Laws.

(Public)

Sponsors: Senators Odom and Ballantine.

Referred to: Judiciary II.

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A TEMPORARY LICENSE AS A PROFESSIONAL
3 BONDSMAN OR SURETY BONDSMAN, TO CREATE THREE NEW
4 CRIMINAL OFFENSES OF BAIL-JUMPING, TO INCREASE THE AMOUNT
5 OF THE SECURITY DEPOSIT THAT A BONDSMAN MUST POST WITH
6 THE COMMISSIONER OF INSURANCE, AND TO AMEND CERTAIN LAWS
7 REGARDING PRETRIAL RELEASE.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 58-71-1 is amended by adding a new subdivision to read:
10 "(12) 'Temporary licensee' means a person employed by a professional
11 bondsman, surety bondsman, or insurer and licensed in accordance
12 with G.S. 58-71-41."

13 Section 2. G.S. 58-71-25 reads as rewritten:

14 "**§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.**

15 The person desiring to make a surrender of the defendant shall ~~procure a certified~~
16 ~~copy of the undertakings and deliver them together with~~ the defendant to the official
17 in whose custody the defendant was at the time bail was taken, or to the official into
18 whose custody he would have been given had he been committed, who shall detain
19 the defendant in his custody thereon, as upon a commitment, and by a certificate in
20 writing acknowledge the surrender.

21 ~~Upon the presentation of certified copy of the undertakings and the certificate of~~
22 ~~the official, the~~ The court before which the defendant has been held to answer, or the
23 court in which the preliminary examination, warrant, indictment, information or
24 appeal as the case may be, is pending, shall upon notice of three days given by the

1 person making the surrender to the prosecuting officer of the court having
2 jurisdiction of the offense, together with a copy of the undertakings and certificate,
3 order that the obligors be exonerated from liability of their undertakings, and, if
4 money or bonds have been deposited as bail, that such money or bonds be refunded."

5 Section 3. Chapter 58 of the General Statutes is amended by adding a
6 new section to read:

7 "§ 58-71-41. Temporary license as surety agent or professional bondsman.

8 (a) Authority to Issue Temporary License. -- The Commissioner may issue a
9 temporary license as a surety bondsman or a runner in accordance with this section.
10 A temporary license may be issued under this section only to a natural person. The
11 Commissioner shall not issue a second or subsequent temporary license under this
12 section to any individual whose temporary license in this State has expired.

13 (b) Application Generally. -- The applicant shall apply for a license on forms
14 prepared and supplied by the Commissioner, and the Commissioner may propound
15 any reasonable interrogatories to an applicant for a license under this section relating
16 to the applicant's qualifications, residence, prospective place of business, and any
17 other matters which, in the opinion of the Commissioner, are deemed necessary in
18 order to protect the public and ascertain the qualifications of the applicant. The
19 Commissioner may also conduct any reasonable inquiry or investigation relative to
20 the determination of the applicant's fitness to be licensed or to continue to be
21 licensed.

22 (c) Denial of Application and Reapplication for Temporary License. -- A person
23 whose application under this section is denied may reapply, but the Commissioner
24 may not consider more than one application submitted by the same person within any
25 one-year period.

26 (d) Picture Identification Card Required; Surrender of Identification Card Upon
27 Termination of Temporary License. -- When a temporary license is issued under this
28 section, the Commissioner shall issue a picture identification card, of design, size, and
29 content approved by the Commissioner, to the temporary licensee. Each temporary
30 licensee must carry this card at all times when working in the scope of the temporary
31 licensee's employment. A temporary licensee whose temporary license is terminated
32 must surrender the identification card to the Commissioner within 10 working days of
33 the termination.

34 (e) Qualifications for Temporary License. -- An applicant for a temporary license
35 must meet all of the following qualifications:

- 36 (1) Be 18 years of age or older.
37 (2) Be a resident of this State.
38 (3) Be a person of high character and approved integrity.
39 (4) Is not under indictment or information for and has no prior
40 conviction, guilty plea, or plea of no contest for a felony or a crime
41 involving moral turpitude.
42 (5) Has not been in any manner disqualified under the laws of this
43 State or any other state to engage in the bail bond business.

1 (6) Has completed all educational requirements under G.S. 58-71-71
2 and licensure examination.

3 (f) Supporting Information Required to Accompany Application. -- In addition to
4 the other requirements of this section, an applicant for a temporary license must
5 provide all of the following with the applicant's application:

6 (1) Documentation that affirmatively shows that the applicant is
7 employed at the time of application, and that at all times
8 throughout the existence of the temporary license, the applicant
9 shall be employed by only one licensed and appointed supervising
10 professional bondsman, surety bondsman, or authorized insurer,
11 who supervises the work of the applicant and is responsible for the
12 licensee's conduct in the bail bond business.

13 (2) A certificate of employment that states the judicial district of the
14 employer and the adjacent judicial districts to which the
15 applicant's bail writing will be limited.

16 (3) A report as to the applicant's integrity and moral character on a
17 form prescribed by the Commissioner and executed by the
18 employer.

19 (4) Statements regarding the character of the applicant by at least
20 three reputable citizens who are residents of the same counties in
21 which the applicant proposes to engage as a temporary licensee.

22 (5) A complete set of the applicant's fingerprints certified by an
23 authorized law enforcement officer and a recent credential-sized,
24 full-face photograph of the applicant. The Commissioner shall not
25 issue a temporary license under this section until the
26 Commissioner has received a report from the State Bureau of
27 Investigation and the Federal Bureau of Investigation relative to
28 the existence or nonexistence of a criminal history based on the
29 applicant's fingerprints.

30 (g) Fees. -- The Commissioner shall not issue a license under this section until all
31 applicable license fees as prescribed in G. S. 58-71-55 are paid.

32 (h) Terms of Temporary Licenses. -- A temporary license issued under this section
33 shall be effective for a period of one year from the date of issuance, subject to earlier
34 termination at the request of the employer or upon suspension or revocation by the
35 Commissioner. An individual licensed under this section shall not perform any
36 functions for which a professional bondsman's license or a surety bondsman's license
37 is required after expiration of the temporary license unless the individual is licensed
38 under this Article as a runner or a surety bondsman.

39 (i) Authority of Temporary Licensee. -- Except as provided in subsection (j) of this
40 section, a temporary licensee has the same authority as a professional bondsman or a
41 surety bondsman. That authority includes presenting defendants in court,
42 apprehending, arresting, and surrendering defendants to the proper authorities,
43 keeping defendants under necessary surveillance, executing or signing bonds,
44 handling collateral receipts, and delivering bonds to appropriate authorities.

1 (j) Limitations on Temporary Licensee. -- A temporary licensee can only write bail
2 in the judicial district where the main office of the employer of the temporary
3 licensee is located and any adjacent judicial district. A temporary licensee shall not
4 operate an agency or branch agency separate from the location of the supervising
5 professional bondsman, surety bondsman, or insurer by whom the temporary licensee
6 is employed.

7 (k) Liability of Employer of Temporary Licensee. -- The employer of a temporary
8 licensee is responsible for the bail bonding acts of the temporary licensee.

9 (l) Eligibility of Temporary Licensee to Be Licensed as a Runner or Surety
10 Bondsman. -- After completing the term as a temporary licensee, an individual may
11 file an application for and become eligible for a license as a runner or surety
12 bondsman."

13 Section 4. G.S. 58-71-145 reads as rewritten:

14 "**§ 58-71-145. Financial responsibility of professional bondsmen.**

15 Each professional bondsman acting as surety on bail bonds in this State shall
16 maintain a deposit of securities with and satisfactory to the Commissioner of a fair
17 market value of at least one-eighth the amount of all bonds or undertakings written in
18 this State on which he is absolutely or conditionally liable as of the first day of the
19 current month. The amount of this deposit must be reconciled with the bondsman's
20 liabilities as of the first day of the month on or before the fifteenth day of said month
21 and the value of said deposit shall in no event be less than ~~five~~ twenty-five thousand
22 dollars (~~\$5,000~~). (\$25,000)." ●

23 Section 5. G.S. 15A-534 reads as rewritten:

24 "**§ 15A-534. Procedure for determining conditions of pretrial release.**

25 (a) In determining conditions of pretrial release a judicial official must impose one
26 of the following conditions:

- 27 (1) Release the defendant on his written promise to appear.
28 (2) Release the defendant upon his execution of an unsecured
29 appearance bond in an amount specified by the judicial official.
30 (3) Place the defendant in the custody of a designated person or
31 organization agreeing to supervise him.
32 (4) Require the execution of an appearance bond in a specified
33 amount secured by a cash deposit of the full amount of the bond,
34 by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent
35 surety.

36 If condition (3) is imposed, however, the defendant may elect to execute an
37 appearance bond under subdivision (4). The judicial official may also place
38 restrictions on the travel, associations, conduct, or place of abode of the defendant as
39 conditions of pretrial release.

40 (b) The judicial official in granting pretrial release must impose condition (1), (2),
41 or (3) in subsection (a) above unless he determines that such release will not
42 reasonably assure the appearance of the defendant as required; will pose a danger of
43 injury to any person; or is likely to result in destruction of evidence, subornation of
44 perjury, or intimidation of potential witnesses. Upon making the determination, the

1 judicial official must then impose condition (4) in subsection (a) above instead of
2 condition (1), (2), or ~~(3), and (3)~~. The judicial official must record the reasons for so
3 ~~doing~~ in writing the reasons for imposing conditions (1), (2), (3), or (4) to the extent
4 provided in the policies or requirements issued by the senior resident superior court
5 judge pursuant to G.S. 15A-535(a).

6 (c) In determining which conditions of release to impose, the judicial official
7 must, on the basis of available information, take into account the nature and
8 circumstances of the offense charged; the weight of the evidence against the
9 defendant; the defendant's family ties, employment, financial resources, character,
10 and mental condition; whether the defendant is intoxicated to such a degree that he
11 would be endangered by being released without supervision; the length of his
12 residence in the community; his record of convictions; his history of flight to avoid
13 prosecution or failure to appear at court proceedings; and any other evidence
14 relevant to the issue of pretrial release.

15 (d) The judicial official authorizing pretrial release under this section must issue
16 an appropriate order containing a statement of the conditions imposed, if any; inform
17 the defendant in writing of the penalties applicable to violations of the conditions of
18 his release; and advise him that his arrest will be ordered immediately upon any
19 violation. The order of release must be filed with the clerk and a copy given the
20 defendant.

21 (e) A magistrate or a clerk may modify his pretrial release order at any time prior
22 to the first appearance before the district court judge. At or after such first
23 appearance, except when the conditions of pretrial release have been reviewed by the
24 superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial
25 release order of the magistrate or clerk or any pretrial release order entered by him
26 at any time prior to:

- 27 (1) In a misdemeanor case tried in the district court, the noting of an
28 appeal; and
29 (2) In a case in the original trial jurisdiction of the superior court, the
30 binding of the defendant over to superior court after the holding,
31 or waiver, of a probable-cause hearing.

32 After a case is before the superior court, a superior court judge may modify the
33 pretrial release order of a magistrate, clerk, or district court judge, or any such order
34 entered by him, at any time prior to the time set out in G.S. 15A-536(a).

35 (f) For good cause shown any judge may at any time revoke an order of pretrial
36 release. Upon application of any defendant whose order of pretrial release has been
37 revoked, the judge must set new conditions of pretrial release in accordance with this
38 Article.

39 (g) In imposing conditions of pretrial release and in modifying and revoking
40 orders of release under this section, the judicial official must take into account all
41 evidence available to him which he considers reliable and is not strictly bound by the
42 rules of evidence applicable to criminal trials.

43 (h) A bail bond posted pursuant to this section is effective and binding upon the
44 obligor throughout all stages of the proceeding in the trial division of the General

1 Court of Justice until the entry of judgment in the district court from which no
2 appeal is taken or the entry of judgment in the superior court. The obligation of an
3 obligor, however, is terminated at an earlier time if:

- 4 (1) A judge authorized to do so releases the obligor from his bond; or
- 5 (2) The principal is surrendered by a surety in accordance with G.S.
6 15A-540; or
- 7 (3) The proceeding is terminated by voluntary dismissal by the State
8 ~~before forfeiture is ordered under G.S. 15A-544(b); or State; or~~
- 9 (4) Prayer for judgment has been continued indefinitely in the district
10 ~~court; court; or~~
- 11 (5) An appeal is made by the defendant from district court to superior
12 court; or
- 13 (6) The court places the defendant in deferred prosecution.

14 (i) In accordance with G.S. 15A-543, if the principal fails to appear in court as
15 required, the court shall issue an order for arrest for the failure to appear and shall
16 set a secured bond at an amount of at least twice the amount of the previous bond.

17 (j) If the principal fails to appear in court twice on the same charge, the conditions
18 for pretrial release shall be set by a judge.

19 (k) A person who has been charged with or convicted of the commission of a
20 felony under the laws of this State and has been released on bail or on his or her own
21 recognizance upon the condition that the person will subsequently appear at a
22 specified time and place commits the offense of felony bail-jumping if, after actual
23 notice to the person in open court or notice to the person by mailing to the person's
24 last known address or otherwise being notified personally in writing by a court
25 official or officer of the court, the person fails without sufficient excuse to appear at
26 that time and place. A person convicted of the offense of felony bail-jumping is
27 guilty of a Class H felony.

28 (l) Any person who has been charged with or convicted of the commission of a
29 misdemeanor and has been released on bail or on his or her own recognizance upon
30 the condition that the person will subsequently appear at a specified time and place
31 commits the offense of misdemeanor bail-jumping if, after actual notice to the person
32 in open court or notice to the person by mailing to the person's last known address
33 or otherwise being notified personally in writing by a court official or officer of the
34 court, the person fails without sufficient excuse to appear at that time and place. A
35 person convicted of the offense shall be guilty of a Class 3 misdemeanor.

36 (m) Any person who has been charged with or convicted of any misdemeanor and
37 has been released on bail or on his or her own recognizance upon the condition that
38 the person will subsequently appear at a specified time and place and who, after
39 actual notice to the person in open court or notice to the person by mailing to the
40 person's last known address or otherwise being notified personally in writing by a
41 court official or officer of the court, leaves the State to avoid appearing and fails
42 without sufficient excuse to appear at that time and place commits the offense of out-
43 of-state bail-jumping. A person convicted of the offense of out-of-state bail-jumping
44 is guilty of a Class I felony."

1 Section 6. This act becomes effective December 1, 1999. Section 5 of
2 this act applies to offenses committed on or after December 1, 1999.

- 1 (7) ~~Against bail; bail or judgment of forfeiture; within three years after~~
2 ~~judgment of forfeiture under the provisions of G.S. 15A-544~~
3 ~~against the principal; but bail may discharge himself by a surrender~~
4 ~~of the principal, at any time before final judgment against the bail-~~
5 ~~principal or surety.~~
- 6 (8) For fees due to a clerk, sheriff or other officer, by the judgment of
7 a court; within three years from the rendition of the judgment, or
8 the issuing of the last execution thereon.
- 9 (9) For relief on the ground of fraud or mistake; the cause of action
10 shall not be deemed to have accrued until the discovery by the
11 aggrieved party of the facts constituting the fraud or mistake.
- 12 (10) Repealed by Session Laws 1977, c. 886, s. 1.
- 13 (11) For the recovery of any amount under and by virtue of the
14 provisions of the Fair Labor Standards Act of 1938 and
15 amendments thereto, said act being an act of Congress.
- 16 (12) Upon a claim for loss covered by an insurance policy which is
17 subject to the three-year limitation contained in lines 158 through
18 161 of the Standard Fire Insurance Policy for North Carolina, G.S.
19 58-44-15(c).
- 20 (13) Against a public officer, for a trespass, under color of his office.
- 21 (14) An action under Chapter 75B of the General Statutes, the action in
22 regard to a continuing violation accrues at the time of the latest
23 violation.
- 24 (15) For the recovery of taxes paid as provided in G.S. 105-267 and
25 G.S. 105-381.
- 26 (16) Unless otherwise provided by statute, for personal injury or
27 physical damage to claimant's property, the cause of action, except
28 in causes of actions referred to in G.S. 1-15(c), shall not accrue
29 until bodily harm to the claimant or physical damage to his
30 property becomes apparent or ought reasonably to have become
31 apparent to the claimant, whichever event first occurs. Provided
32 that no cause of action shall accrue more than 10 years from the
33 last act or omission of the defendant giving rise to the cause of
34 action.
- 35 (17) Against a public utility, electric or telephone membership
36 corporation, or a municipality for damages or for compensation for
37 right-of-way or use of any lands for a utility service line or lines to
38 serve one or more customers or members unless an inverse
39 condemnation action or proceeding is commenced within three
40 years after the utility service line has been constructed or by
41 October 1, 1984, whichever is later.
- 42 (18) Against any registered land surveyor as defined in G.S. 89C-3(9) or
43 any person acting under his supervision and control for physical
44 damage or economic or monetary loss due to negligence or a

1 deficiency in the performance of surveying or platting as defined in
2 G.S. 1-47(6)."

3 Section 2. G.S. 15A-531 reads as rewritten:

4 "§ 15A-531. Definitions.

5 As used in this Article the following definitions apply unless the context clearly
6 requires otherwise:

- 7 (1) Bail Bond. -- An undertaking by the principal to appear in court as
8 required upon penalty of forfeiting bail to the State of North
9 Carolina in a stated amount. Bail bonds include an unsecured
10 appearance bond, an appearance bond secured by a cash deposit of
11 the full amount of the bond, an appearance bond secured by a
12 mortgage pursuant to G.S. 58-74-5, and an appearance bond
13 secured by at least one solvent surety. A bail bond for which the
14 surety is a surety bondsman, as defined in G.S. 58-71-1, acting on
15 behalf of an insurer shall be considered the same as a cash deposit
16 for all purposes in this Article. ~~A bail bond signed by a~~
17 ~~professional bondsman who is not a surety bondsman, as defined in~~
18 ~~G.S. 58-71-1, shall not be considered the same as a cash deposit~~
19 ~~under this Article.~~ Cash bonds set in child support contempt
20 proceedings shall not be satisfied in any manner other than the
21 deposit of cash.
- 22 (2) Obligor. -- A principal or a surety on a bail bond.
- 23 (3) Principal. -- A defendant or material witness obligated to appear in
24 court as required upon penalty of forfeiting bail under a bail bond.
- 25 (4) Surety. -- One who, with the principal, is liable for the amount of
26 the bail bond upon forfeiture of bail."

27 Section 3. G.S. 15A-534 is amended by adding the following subsections:

28 "(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as
29 required, the court shall issue an order for arrest for the failure to appear and shall
30 set a secured bond at an amount of not less than twice the amount of the previous
31 bond. Failure of the court to comply with this provision shall not affect the validity
32 of any order of forfeiture.

33 (j) If the principal fails to appear in court on more than two occasions for the same
34 offense, a judge shall determine in open court whether or not to release the principal
35 and, if so, the conditions of release."

36 Section 4. G.S. 15A-544 reads as rewritten:

37 "§ 15A-544. Forfeiture.

38 (a) ~~By entering into executing a bail bond the obligor principal and each surety~~
39 ~~submits to the jurisdiction of the court and irrevocably appoints the clerk as the~~
40 ~~obligor's agent for any proceedings with reference to the bond. consents to be bound~~
41 ~~by any notice given in compliance with this section. The obligor's liability of the~~
42 ~~principal and each surety may be enforced en motion as provided in this section~~
43 ~~without the necessity of an independent action. Each obligor, including the principal,~~

1 ~~bail agent, and the surety represented by the bail agent, shall enter on the bond the~~
2 ~~obligor's~~ The following information shall be entered on the bond:

3 (1) The principal and each accommodation bondsman shall enter that
4 person's mailing address, street address, and telephone number for
5 the service of any process required by this section or other
6 provision of law. If the address or telephone number of the obligor
7 principal or an accommodation bondsman changes during the
8 pendency of any proceeding with reference to the bond, it shall be
9 the duty of the obligor that person to notify the clerk of the
10 obligor's in writing within three business days of that person's new
11 address and telephone number.

12 (2) Each professional bondsman, each runner acting on behalf of a
13 professional bondsman, and each surety bondsman acting on behalf
14 of an insurer shall enter on the bond a reference to the license or
15 power of attorney under which the professional bondsman or
16 insurer is authorized to execute bonds in the county, as that license
17 or power is registered in the office of the clerk of superior court
18 pursuant to G.S. 58-711-140.

19 (a1) Each of the following terms shall have in this Article the same meaning that
20 those terms have in Article 71 of Chapter 58 of the General Statutes, under the
21 definitions in G.S. 58-71-1: accommodation bondsman, bail bond, insurer,
22 professional bondsman, runner, surety bondsman.

23 (b) If the principal does not comply with the conditions of the bail bond, the
24 court having jurisdiction must enter an order declaring the bail to be forfeited. If
25 When forfeiture is ordered by the court, a copy of the order of forfeiture and notice
26 that judgment will be entered upon the order after 60 90 days from the date upon
27 which the principal failed to appear must be served on each obligor by the clerk on
28 the principal and surety. Service is to be made by the clerk by mailing by first-class
29 mail a copy of the order of forfeiture and notice to each obligor at each obligor's
30 address as noted on the bond and note on the original the date of mailing, as follows:

31 (1) To the principal and each accommodation bondsman at the
32 address as last noted on the bond; and

33 (2) To each professional bondsman and insurer at the address shown
34 on the license or power of attorney most recently registered with
35 the clerk of superior court pursuant to G.S. 58-71-140.

36 The clerk shall note on the original notice the date of mailing. Service is complete
37 three days after the mailing. The clerk may also provide a copy of the notice to any
38 runner or surety bondsman who executed the bond on behalf of a professional
39 bondsman or insurer, but the clerk's failure or refusal to do so shall not affect the
40 liability of the professional bondsman or insurer.

41 (c) ~~Except as provided in subsection (e1) of this section, at any time within 60~~
42 ~~days following the date of service, or on the first presentment of the forfeiture~~
43 ~~calendar more than 60 days after the date of service, At any time prior to the entry of~~
44 a judgment as provided in subsection (d) of this section, the principal or surety may

1 move the court having jurisdiction of the matter, orally in open court or in writing, to
2 strike the order of forfeiture and recall the notice of forfeiture. Notice or a copy of
3 the motion filed shall be served upon the attorney for the county school board and
4 the district attorney at least three working days prior to the next regularly scheduled
5 bond hearing date as provided in subsection (d) of this section. The petitioner, the
6 district attorney, and the county school board attorney shall be given an opportunity
7 to appear and be heard.

8 If the principal or surety appears and moves within ~~the time allowed~~ 90 days
9 following the date of service of the order of forfeiture and satisfies the court that the
10 principal's failure to appear on the date set was impossible ~~or that the principal's~~
11 ~~failure to appear was without the principal's fault,~~ because the principal was either
12 incarcerated in North Carolina, or was unable to appear because of physical or
13 mental illness, the order of forfeiture must shall be set aside.

14 If, at the hearing, the principal or surety satisfies the court that the principal's
15 failure to appear was without the principal's fault, or if the principal is surrendered
16 by the surety on the order for arrest and incarcerated in the State within 90 days of
17 the entry of the order of forfeiture the order of forfeiture may be stricken in whole or
18 in part at the discretion of the court upon the payment of costs.

19 If the principal or surety does not satisfy the court ~~that the principal's appearance~~
20 ~~on the date set was impossible or that the principal's failure to appear was without~~
21 ~~the principal's fault,~~ court, then the court must then shall enter judgment for the
22 State against the principal and surety for the amount of the bail and the cost of the
23 proceeding. proceeding as provided in subsection (d) of this section.

24 ~~(e1) If the principal does not appear before the court having jurisdiction because~~
25 ~~the principal is incarcerated in North Carolina and unable to appear before the court,~~
26 ~~but the surety appears within the time allowed following the date of service and~~
27 ~~satisfies the court that the principal's appearance on the date set was impossible~~
28 ~~because the principal was incarcerated in North Carolina, the order of forfeiture must~~
29 ~~be set aside.~~

30 ~~(d) To facilitate the procedure under this section, the~~ The clerk in each county
31 shall prepare for both the district and superior court a forfeiture bond calendar at
32 least once each month when court is in session. The respective calendars shall be
33 heard by the senior resident superior court judge and chief district judge or their
34 designees at least once each month when court is in session. The forfeiture bond
35 calendar shall list the names of all principals and sureties to whom forfeiture has
36 been ordered more than ~~60~~ 90 days previously in the county and as to which
37 judgments of forfeiture against the principal and surety have not been entered ~~or, if~~
38 ~~entered, not yet satisfied by execution, or stricken.~~ The forfeiture calendar shall show
39 the amount of the bond ordered forfeited in each case. In addition, the clerk shall
40 place on the forfeiture calendar for hearing all written motions to strike an order of
41 forfeiture filed since the previous forfeiture calendar. It shall be the duty of the
42 district attorney to present the forfeiture calendar to the court, but the attorney for
43 the county school board shall have the right to appear and be heard when the
44 forfeiture calendar is presented. At the district attorney's discretion, the district

1 attorney may appoint the county school board attorney as the district attorney's
2 designee for the presentation of the forfeiture calendar.

3 (e) At any time within ~~90 days~~ three years after entry of the judgment of forfeiture
4 against a principal or surety, the principal or surety, by verified written ~~petition,~~
5 petition setting forth the specific grounds upon which remission is being requested,
6 may request that the judgment be remitted in whole or in part, ~~upon such conditions~~
7 ~~as the court may impose, if it appears that justice requires the remission of part or all~~
8 ~~of the judgment. for extraordinary cause shown.~~ A copy of the petition ~~must shall~~ be
9 served upon the attorney for the county school board and the district attorney at least
10 three working days prior to the hearing. The clerk shall place on the forfeiture
11 calendar for hearing all petitions that have been filed during the previous month or
12 since the last forfeiture bond calendar. The petitioner, the district attorney, and the
13 school board attorney shall be notified of the date, time, and place of the ~~hearing.~~
14 hearing as provided in subsection (d) of this section. The petitioner, the district
15 attorney, and the county school board attorney shall be given an opportunity to
16 appear and be heard. ~~If the principal is surrendered by the surety and incarcerated in~~
17 ~~the State within 90 days of the entry of the judgment, the forfeiture shall be stricken~~
18 ~~upon the payment of costs. If the principal is incarcerated or served an order for~~
19 ~~arrest in North Carolina within 90 days of the entry of the judgment and the principal~~
20 ~~placed on a new bond or released by the court, then the forfeiture shall be stricken~~
21 ~~upon the payment of costs. If money has been paid to the county school fund~~
22 pursuant to execution on a judgment of forfeiture, the school board shall refund to
23 the principal or surety entitled the amount of any remission less costs granted under
24 the terms of this subsection upon receipt of a certified copy of the judgment of
25 remission from the clerk.

26 (f) ~~If a judgment has not been remitted within the period provided in subsection~~
27 ~~(e) above, the~~ The clerk must shall issue execution on the judgment within not less
28 than 30 days, days nor more than 45 days after the entry of the judgment, and remit
29 the clear proceeds to the county school fund for use in maintaining free public
30 schools. Any clerk who fails to perform his duty as required in this subsection is
31 subject to a penalty of five hundred dollars (\$500.00). The judgment shall bear
32 interest from the date of breach at the 'legal rate'. The filing of a petition for
33 remission does not stay the execution of the judgment of forfeiture. Any stay of
34 execution shall be obtained in accordance with Rules 62, 6, and 7 of the North
35 Carolina Rules of Civil Procedure.

36 (g) ~~If a levy of execution upon a judgment against an obligor remains unsatisfied~~
37 ~~for 10 days, the sheriff clerk shall notify the clerks and magistrates in each the county~~
38 ~~in the prosecutorial district and the obligor and the North Carolina Department of~~
39 ~~Insurance, and the surety shall not become surety on any bail bond in the~~
40 ~~prosecutorial district county so long as the judgment remains unsatisfied. If the~~
41 ~~execution is not satisfied by a bail bondsman licensed under the provisions of Article~~
42 71 of Chapter 58 of the General Statutes within 10 days of the issuance of execution,
43 the Commissioner of Insurance, upon notice from the clerk, shall suspend the surety's
44 license as provided by G.S. 58-71-80(a)(7) and shall satisfy the execution from the

1 bail bondsman's deposit required by G.S. 58-71-145. Nothing in this subsection
2 makes lawful any act made unlawful by Article 71 of Chapter 58 of the General
3 Statutes.

4 ~~(h) For extraordinary cause shown, the court which has entered judgment upon a~~
5 ~~forfeiture of a bond may, after execution, remit the judgment in whole or in part and~~
6 ~~order the clerk to refund such amounts as the court considers appropriate. Any~~
7 ~~person moving for remission of judgment must do so by verified petition, and a copy~~
8 ~~of the petition must be served upon the attorney for the county school board at least~~
9 ~~three working days prior to the hearing on the motion. The moving party must notify~~
10 ~~the attorney for the school board of the time and place of the hearing, and such~~
11 ~~attorney, if he so desires, must be given an opportunity to appear and be heard. If~~
12 ~~money has been paid to the county pursuant to execution on a judgment of forfeiture,~~
13 ~~it must refund to the person entitled the amount of any remission granted under the~~
14 ~~terms of this subsection upon receipt of a certified copy of the judgment of remission~~
15 ~~from the clerk.~~

16 (i) A principal, a surety, the State, or a local board of education may appeal from:
17 (i) an order striking the order of forfeiture, (ii) the entry of a judgment of forfeiture
18 or order of remission, in whole or in part, or (iii) denial of a petition to remit a
19 judgment of forfeiture, in whole or in part. The Rules of Appellate Procedure
20 applicable to a civil action shall apply to the appeal."

21 Section 5. G.S. 15A-547.1 reads as rewritten:

22 "**§ 15A-547.1. Remit bail bond if defendant sentenced to community or intermediate**
23 **punishment.**

24 If bail has not been forfeited for the defendant's failure to appear and a defendant
25 is convicted and sentenced to community punishment or intermediate punishment
26 and no appeal is pending, then the court shall remit the bail bond to the obligor
27 release the surety of his obligation on the bail bond in accordance with the provisions
28 of this Article and shall not require that the bail bond continue to be posted while
29 the defendant serves his or her sentence. Article. However, the court in its discretion
30 may require the defendant to post a new bond as a condition for compliance with any
31 condition of a suspended sentence, probation, or deferred prosecution."

32 Section 6. G.S. 24-5(a) reads as rewritten:

33 "(a) Contracts. -- In an action for breach of contract, ~~except an action on a penal~~
34 ~~bond,~~ the amount awarded on the contract bears interest from the date of breach.
35 The fact finder in an action for breach of contract shall distinguish the principal from
36 the interest in the award, and the judgment shall provide that the principal amount
37 bears interest until the judgment is satisfied. If the parties have agreed in the contract
38 that the contract rate shall apply after judgment then interest on an award in a
39 contract action shall be at the contract rate after judgment, otherwise it shall be at the
40 legal rate; provided, however, that on awards in actions on contracts pursuant to
41 which credit was extended for personal, family, household, or agricultural purposes,
42 interest shall be at the legal rate, provided however, such rate shall not exceed the
43 contract rate."

44 Section 7. G.S. 58-71-35(b) is repealed.

1 Section 8. This act is effective when it becomes law.

APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

99-RVZ-001

Short Title: Amend Bail Bondsmen and Runners Law. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE SUPERVISION OF FIRST YEAR BAIL BONDSMEN AND
3 RUNNERS; TO MAKE IT A CLASS I FELONY FOR A PERSON TO ACT AS A
4 RUNNER OR BAIL BONDSMAN WITHOUT OBTAINING AND MAINTAINING THE
5 REQUIRED LICENSE OR FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY
6 FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN
7 \$1500; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH
8 OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE
9 FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON
10 THE DEATH OR TERMINAL ILLNESS OF A BAIL BONDSMAN; AND TO
11 INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF
12 PROFESSIONAL BONDSMEN.

13 The General Assembly of North Carolina enacts:

14 Section 1. G. S. 58-71-1 is amended by adding a new
15 subdivision to read:

16 "(4a) 'First year licensee' means any person who has
17 been licensed as a bail bondsman or runner
18 under this Article and who has held the
19 license for a period of less than twelve
20 months.

21 Section 2. G. S. 58-71-1 is amended by adding a new
22 subdivision to read:

23 "(9a) 'Supervising Bail Bondsman' means any person
24 licensed by the Commissioner as a professional
25 bondsman or surety bondsman who employs or

1 contracts with any new licensee under this
2 Article."

3 Section 3. G.S. 58-71-40(a) reads as rewritten:

4 "(a) ~~No~~ It is a Class I felony for any person shall to act in
5 the capacity of a bail bondsman or runner or perform any of the
6 functions, duties, or powers prescribed for bail bondsmen or
7 runners under the provisions of this Article unless that person
8 shall be qualified and (except as regards an accommodation
9 bondsman) licensed in accordance with the provisions of without
10 obtaining and maintaining a license under this Article. No
11 license shall be issued to a professional bondsman or runner
12 except to an individual natural person."

13 Section 4. Article 71 of Chapter 58 of the General
14 Statutes is amended by adding a new section to read:

15 "§ 58-71-41. First year licensees; limitations.

16 (a) Except as provided in this section, a first year licensee
17 shall have the same authority as other persons licensed as a bail
18 bondsmen or runner under this Article. A first year licensee
19 shall operate only under the supervision of and from the business
20 address of a licensed supervising bail bondsman, which address
21 shall be on file with the Department. A first year licensee may
22 only be employed by or contract with one supervising bail
23 bondsman, and shall be limited to writing bail bonds within the
24 judicial district or bordering judicial districts where the
25 supervising bail bondsman maintains a place of business.

26 (b) When a first year licensee has completed twelve
27 uninterrupted months of supervision, the supervising bail
28 bondsman shall give notice of that fact to the Commissioner in
29 writing. If the licensee will continue to be employed by or
30 contract with the supervising bail bondsman beyond the initial
31 twelve month period, the supervising bail bondsman shall continue
32 to supervise and be responsible for the licensee's acts.

33 (c) If the employment of or contract with a first year
34 licensee is terminated, the supervising bail bondsman shall
35 notify the Commissioner in writing and shall specify the reason
36 for the termination.

37 (d) Provided all other licensing requirements are met, an
38 applicant for a bail bondsman or runner's license who has
39 previously been licensed with the Commissioner for a period of at
40 least three consecutive years and who has been inactive or
41 unlicensed for a period of not more than three consecutive years
42 shall not be deemed a new licensee for purposes of this section."

43 Section 5. G. S. 58-71-80 is amended by adding a new
44 subsection to read:

1 "(c) In the case of a first year licensee whose employment or
2 contract is terminated prior to the end of the 12-month
3 supervisory period, the Commissioner may consider all information
4 provided in writing by the supervising bail bondsman in
5 determining whether sufficient cause exists to suspend, revoke or
6 refuse to renew the license or to warrant criminal prosecution of
7 the first year licensee. If the Commissioner determines there is
8 not sufficient cause for adverse administrative action or
9 criminal prosecution, the termination shall not be deemed an
10 interruption and the period of time the licensee was employed by
11 or contracted with the terminating supervising bail bondsman will
12 be credited toward the licensee's completion of the required
13 twelve months of supervision with a subsequent supervising bail
14 bondsman."

15 Section 6. G.S. 58-71-95(5) reads as rewritten:
16 "(5) Accept anything of value from a principal or from anyone on
17 behalf of a principal except the premium, which shall not exceed
18 fifteen percent (15%) of the face amount of the bond; provided
19 that the bondsman shall be permitted to accept collateral
20 security or other indemnity from a principal or from anyone on
21 behalf of a principal. Such collateral security or other
22 indemnity required by the bondsman must be reasonable in relation
23 to the amount of the bond and shall be returned within 72 hours
24 after final termination of liability on the bond. Any bail
25 bondsman who knowingly and willfully fails to return any
26 collateral security, the value of which exceeds one thousand five
27 hundred dollars (\$1,500.00), is guilty of a Class I felony. All
28 collateral security, such as personal and real property, subject
29 to be returned must be done so under the same conditions as
30 requested and received by the bail bondsman."

31 Section 7. G.S. 58-71-100 reads as rewritten:
32 "§ 58-71-100. Receipts for ~~collateral.~~ collateral; trust
33 accounts.

34 When a bail bondsman accepts collateral he shall give a
35 written receipt for ~~same,~~ the collateral. ~~and this~~ The receipt
36 shall give in detail a full description of the collateral
37 received. Collateral security shall be held and maintained in
38 trust. When collateral security is received in the form of cash
39 or check or other negotiable instrument, the licensee shall
40 deposit the cash or instrument within two banking days after
41 receipt, in an established, separate non-interest bearing trust
42 account in any bank located in North Carolina. The trust account
43 funds shall not be commingled with other operating funds."

1 Section 8. Article 71 of Chapter 58 of the General
2 Statutes is amended by adding a new section to read:

3 "§ 58-71-121. Death or terminal illness of a bail bondsman.

4 In the case of death or terminal illness of a licensed bail
5 bondsman, the spouse or surviving spouse, next of kin, person or
6 persons holding a power of attorney, or executor or administrator
7 of the licensed bail bondsman, may contract with another licensed
8 bail bondsman to perform those duties to have the licensee's
9 outstanding bail bond obligations resolved to the satisfaction of
10 the courts. The terms and conditions of the contract must be
11 mutually agreed upon by the parties. The contract must be filed
12 with the Commissioner and every clerk of superior court where it
13 can be determined the licensee has pending outstanding bail bond
14 obligations. The licensed bail bondsman who has agreed to
15 perform these duties shall not, at the time of the execution of
16 the contract, have any administrative or criminal actions pending
17 against him or her."

18 Section 9. G. S. 58-71-145 reads as rewritten:

19 "§ 58-71-145. Financial responsibility of professional bondsmen.

20 Each professional bondsman acting as surety on bail bonds in
21 this State shall maintain a deposit of securities with and
22 satisfactory to the Commissioner of a fair market value of at
23 least one-eighth the amount of all bonds or undertakings written
24 in this State on which he is absolutely or conditionally liable
25 as of the first day of the current month. The amount of this
26 deposit must be reconciled with the bondsman's liabilities as of
27 the first day of the month on or before the fifteenth day of said
28 month and the value of said deposit shall in no event be less
29 than ~~five thousand dollars (\$5,000).~~ fifteen thousand dollars
30 (\$15,000.)"

31 Section 10. G.S. 58-71-185 reads as rewritten:

32 "§ 58-71-185. Penalties for violations.

33 ~~Any person, firm, association or corporation violating~~ Except as
34 ~~otherwise provided in this Article,~~ any person who violates any
35 of the provisions of this Article is guilty of a Class 1
36 misdemeanor."

37 Section 11. This act becomes effective October 1, 2000.

**Analysis of Legislative Proposal #1
99-RVZ-001**

A BILL TO BE ENTITLED AN ACT TO REQUIRE SUPERVISION OF FIRST YEAR BAIL BONDSMEN AND RUNNERS; TO MAKE IT A CLASS I FELONY FOR A PERSON TO ACT AS A RUNNER OR BAIL BONDSMAN WITHOUT OBTAINING AND MAINTAINING THE REQUIRED LICENSE OR FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN \$1500; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON THE DEATH OR TERMINAL ILLNESS OF A BAIL BONDSMAN; AND TO INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF PROFESSIONAL BONDSMEN.

Sections 1 and 2. Amend the definition section of Article 71 of Chapter 58 of the General Statutes, governing Bail Bondsmen and Runners. Section 1 defines "first year licensee" as any person who has been licensed as a bail bondsman or runner for less than 12 months; Section 2 defines "supervising bail bondsman" as a licensed bondsman who employs or contracts with a new licensee.

Section 3. Amends the law governing bail bondsmen and runners to make it a Class I felony for a person to act as a runner or bail bondsman without obtaining and maintaining the required license.

Section 4. Amends the law governing bail bondsmen and runners to require first year licensees to operate only under the supervision of and from the business address of a licensed supervising bondsman. Limits first year licensees to operating within the judicial district where the supervising bondsman maintains a place of business, or in a bordering judicial district. Requires the supervising bondsman to notify the Commissioner of Insurance in writing when the 12-month supervisory period is completed, or upon termination of the employment or contract of a first year licensee. If a licensee is terminated during the supervisory period, the supervising bondsman must notify the Commissioner of the reason for the termination. These provisions do not apply to a person who is reapplying for a license after a period of being inactive, provided that person had previously been licensed for a period of at least 3 consecutive years, and the period of inactivity prior to the new application does not exceed 3 years.

Section 5. Amends the law regarding the authority of the Commissioner of Insurance to deny, suspend, revoke or refuse to renew licenses to provide that in the case of a first year licensee whose employment or contract is terminated, the Commissioner may consider all evidence provided in writing by the supervising bondsman in determining whether to take administrative action or seek criminal prosecution of the licensee. If the Commissioner finds that no sufficient cause exists for disciplinary action, the termination shall not be deemed an interruption for purposes of completion of the 12 month supervisory period, and the licensee shall be credited with time served prior to the termination.

Section 6. Amends the statute which prohibits certain practices by bail bondsmen and runners to provide that any bondsman who knowingly and willfully fails to return any collateral security with a value in excess of \$1500 is guilty of a Class I felony. Collateral security, such as personal and real property, must be returned under the same conditions as requested and received by the bail bondsman.

Section 7. Requires that collateral security be held and maintained in trust. Collateral security received in the form of cash, check, or other negotiable instrument must be deposited in a separate non-interest bearing account in a bank in this State and cannot be commingled with other operating funds.

Section 8. Adds a new section to provide for the disposition of outstanding bail bond obligations upon the death or terminal illness of a bail bondsman. The spouse, next of kin or other legally authorized party acting in behalf of the deceased or incapacitated bondsman may contract with another licensed bondsman to perform those duties that would resolve the bondsman's obligations to the satisfaction of the courts. Terms and conditions of the contract are to be mutually agreed upon by the parties and filed with the Commissioner of Insurance and with every clerk of superior court where it can be determined that the deceased or incapacitated bondsman has pending outstanding bail bond obligations.

Section 9. Increases from \$5,000 to \$15,000 the minimum amount of the deposit that a professional bondsman is required to maintain with the Commissioner of Insurance.

Section 10. Since two offenses have been made felonies (Sections 3 and 6), this section makes a conforming amendment to the existing penalties provision under the Bail Bondsmen and Runners law to clarify that unless otherwise provided any violation of the law is a misdemeanor.

Section 11. Makes the act effective October 1, 2000.

APPENDIX E

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

99-RVZ-002

Short Title: Modernize Bail Bond Forfeitures.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS
3 RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND
4 LAWS COMMITTEE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 15A-531 reads as rewritten:
7 § 15A-531. Definitions.
8 As used in this Article the following definitions apply unless
9 the context clearly requires otherwise:
10 (1) ~~Bail Bond. -- An undertaking by the principal to~~
11 ~~appear in court as required upon penalty of~~
12 ~~forfeiting bail to the State of North Carolina in a~~
13 ~~stated amount. Bail bonds include an unsecured~~
14 ~~appearance bond, an appearance bond secured by a~~
15 ~~cash deposit of the full amount of the bond, an~~
16 ~~appearance bond secured by a mortgage pursuant to~~
17 ~~C.S. 58-74-5, and an appearance bond secured by at~~
18 ~~least one solvent surety. A bail bond for which the~~
19 ~~surety is a surety bondsman, as defined in C.S.~~
20 ~~58-71-1, acting on behalf of an insurer shall be~~
21 ~~considered the same as a cash deposit for all~~
22 ~~purposes in this Article. A bail bond signed by a~~
23 ~~professional bondsman who is not a surety bondsman,~~
24 ~~as defined in C.S. 58-71-1, shall not be considered~~
25 ~~the same as a cash deposit under this Article. Cash~~

- 1 ~~bonds set in child support contempt proceedings~~
2 ~~shall not be satisfied in any manner other than the~~
3 ~~deposit of cash.~~
- 4 (2) ~~Obligor. -- A principal or a surety on a bail bond.~~
5 (3) ~~Principal. -- A defendant or material witness~~
6 ~~obligated to appear in court as required upon~~
7 ~~penalty of forfeiting bail under a bail bond.~~
8 (4) ~~Surety. -- One who, with the principal, is liable~~
9 ~~for the amount of the bail bond upon forfeiture of~~
10 ~~bail.~~
- 11 (1) 'Accommodation bondsman' means a natural person who
12 has reached the age of 18 years and is a bona fide
13 resident of this State and who, aside from love and
14 affection and release of the person concerned,
15 receives no consideration for action as surety and
16 who endorses the bail bond after providing
17 satisfactory evidences of ownership, value and
18 marketability of real or personal property to the
19 extent necessary to reasonably satisfy the official
20 taking bond that such real or personal property
21 will in all respects be sufficient to assure that
22 the full principal sum of the bond will be realized
23 in the event of breach of the conditions thereof.
24 'Consideration' as used in this subdivision does
25 not include the legal rights of a surety against a
26 defendant by reason of breach of the conditions of
27 a bail bond nor does it include collateral
28 furnished to and securing the surety so long as the
29 value of the surety's rights in the collateral do
30 not exceed the defendant's liability to the surety
31 by reason of a breach in the conditions of said
32 bail bond.
- 33 (2) 'Address of record' means:
- 34 a. for a defendant or an accommodation bondsman,
35 the address entered on the bail bond pursuant
36 to G.S. 15A-544.2, or any later address filed
37 by that person with the clerk of superior
38 court;
- 39 b. for an insurance company, the address of the
40 insurance company as it appears on the power
41 of appointment of the company's bail agent
42 registered with the clerk of superior court
43 pursuant to G.S. 58-71-140,

- 1 c. for a bail agent, the address shown on the
2 bail agent's license from the Department of
3 Insurance registered with the clerk of
4 superior court pursuant to G.S. 58-71-140,
5 d. for a professional bondsman, the address shown
6 on that bondsman's license from the Department
7 of Insurance, as registered with the clerk of
8 superior court pursuant to G.S. 58-71-140.
- 9 (3) 'Bail Agent' means any person who is licensed by
10 the Commissioner as a surety bondsman under Article
11 71 of Chapter 58 of the General Statutes, is
12 appointed by an insurance company by power of
13 attorney to execute or countersign bail bonds for
14 the insurance company in connection with judicial
15 proceedings, and receives or is promised
16 consideration for doing so.
- 17 (4) 'Bail Bond' means an undertaking by the defendant
18 to appear in court as required upon penalty of
19 forfeiting bail to the State of North Carolina in a
20 stated amount. Bail bonds include an unsecured
21 appearance bond, an appearance bond secured by a
22 cash deposit of the full amount of the bond, an
23 appearance bond secured by a mortgage pursuant to
24 G.S. 58-74-5, and an appearance bond secured by at
25 least one solvent surety. A bail bond for which
26 the surety is a bail agent acting on behalf of an
27 insurance company shall be considered the same as a
28 cash deposit for all purposes in this Article. A
29 bail bond signed by a professional bondsman who is
30 not a bail agent as defined in subsection (3) of
31 this section, shall not be considered the same as a
32 cash deposit under this Article. Cash bonds set in
33 child support contempt proceedings shall not be
34 satisfied in any manner other than the deposit of
35 cash.
- 36 (5) 'Defendant' means a person obligated to appear in
37 court as required upon penalty of forfeiting bail
38 under a bail bond.
- 39 (6) 'Insurance Company' means any domestic, foreign, or
40 alien surety company which has qualified under
41 Chapter 58 of the General Statutes generally to
42 transact surety business and specifically to
43 transact bail bond business in this State.

1 (7) 'Professional bondsman' means any person who is
2 approved and licensed by the Commissioner of
3 Insurance under Article 71 of Chapter 58 of the
4 General Statutes, and who pledges cash or approved
5 securities with the Commissioner as security for
6 bail bonds written in connection with a judicial
7 proceeding and receives or is promised money or
8 other things of value therefor.

9 (8) 'Surety' means:

- 10 a. the insurance company, when a bail bond is
11 executed by a bail agent on behalf of an
12 insurance company;
13 b. the professional bondsman, when a bail bond is
14 executed by a professional bondsman or by a
15 runner on behalf of a professional bondsman;
16 c. the accommodation bondsman, when a bail bond
17 is executed by an accommodation bondsman.

18 Section 2. G.S. 15A-540 reads as rewritten:

19 § 15A-540. Surrender of a principal defendant by a surety;
20 setting new conditions of release.

21 ~~-(a) A surety may surrender his principal to the sheriff of the~~
22 ~~county in which the principal is bonded to appear or to the~~
23 ~~sheriff where the defendant was bonded. A surety may arrest his~~
24 ~~principal for the purpose of returning him to the sheriff. Upon~~
25 ~~surrender of the principal the sheriff must provide a receipt to~~
26 ~~the surety, a copy of which must be filed with the clerk. Upon~~
27 ~~application by the surety after the surrender of the principal,~~
28 ~~before the forfeiture of bail under G.S. 15A-544(b), the clerk~~
29 ~~must exonerate him from his bond.~~

30 ~~(b) A principal surrendered by his surety is entitled to an~~
31 ~~immediate hearing on whether he is again entitled to release and,~~
32 ~~if so, upon what conditions.~~

33 (a) Going off the bond before breach. -- Before there has
34 been a breach of the conditions of a bail bond, the surety may
35 surrender the defendant as provided in G.S. 58-71-20. Upon
36 application by the surety after such surrender, the clerk must
37 exonerate the surety from the bond.

38 (b) Surrender after breach of condition. -- After there has
39 been a breach of the conditions of a bail bond, a surety may
40 surrender the defendant as provided in this subsection. A surety
41 may arrest the defendant for the purpose of returning the
42 defendant to the sheriff. After arresting a defendant the surety
43 may surrender the defendant to the sheriff of the county in which
44 the defendant is bonded to appear, or to the sheriff where the

1 defendant was bonded. Alternatively, a surety may surrender a
2 defendant who is already in the custody of any sheriff by
3 appearing in person and informing the sheriff that the surety
4 wishes to surrender the defendant. Before surrendering a
5 defendant to a sheriff, the surety must provide the sheriff with
6 a certified copy of the bail bond. Upon surrender of the
7 defendant the sheriff shall provide a receipt to the surety.

8 (c) New conditions of pretrial release. -- When a defendant is
9 surrendered by a surety pursuant to subsection (b) of this
10 section, the sheriff shall without unnecessary delay take the
11 defendant before a judicial official, along with a copy of the
12 undertaking received from the surety and a copy of the receipt
13 provided to the surety. The judicial official shall then
14 determine whether the defendant is again entitled to release and,
15 if so, upon what conditions. The judicial official determining
16 conditions of pretrial release pursuant to this subsection shall
17 impose any conditions set by the court in any order for arrest
18 issued for the defendant's failure to appear. If no conditions
19 have been set, the judicial official shall require the execution
20 of a secured appearance bond in an amount at least double the
21 amount of the previous bond, and shall impose such restrictions
22 on the travel, associations, conduct or place of abode of the
23 defendant as will assure that the defendant will not again fail
24 to appear. The magistrate shall also indicate on the release
25 order that the defendant was surrendered after failing to appear
26 as required pursuant to a prior release order.

27 Section 3. G.S. 15A-544 is repealed.

28 Section 4. The heading for Article 26 of Chapter 15A of
29 the General Statutes reads as rewritten:

30 "ARTICLE 26.

31 Part 1. Bail."

32
33 Section 5. Article 26 of Chapter 15A of the General
34 Statutes is amended by adding a new Part 2, to read:

35 "Part 2. Bail Bond Forfeiture

36
37 §15A-544.1. Forfeiture jurisdiction.

38 By executing a bail bond the defendant and each surety submit
39 to the jurisdiction of the court and irrevocably consent to be
40 bound by any notice given in compliance with this Part. The
41 liability of the defendant and each surety may be enforced as
42 provided in this Part, without the necessity of an independent
43 action.

44

1 §15A-544.2. Identifying information on bond.

2 (a) The following information shall be entered on each bail
3 bond executed under Part I of this Article:

- 4 (1) The name and mailing address of the defendant;
5 (2) The name and mailing address of any accommodation
6 bondsman executing the bond as surety,
7 (3) The name and license number of any professional
8 bondsman executing the bond as surety, and the name
9 and license number of the runner executing the bail
10 bond on behalf of the professional bondsman; and
11 (4) The name of any insurance company executing the
12 bond as surety, and the name, license number and
13 power of appointment number of the bail agent
14 executing the bail bond on behalf of the insurance
15 company.

16 (b) If a defendant is released upon execution of a bail bond
17 that does not contain all the information required by subsection
18 (a) of this section, the defendant's order of pretrial release
19 may be revoked as provided in G.S. 15A-534(f).

20
21 §15A-544.3. Entry of provisional judgment.

22 (a) If a defendant who was released under Part 1 of this
23 Article upon execution of a bail bond fails on any occasion to
24 appear before the court as required, the court shall enter a
25 provisional judgment for the amount of that bail bond in favor of
26 the State against the defendant and against each surety on the
27 bail bond.

28 (b) The provisional judgment shall contain the following
29 information:

- 30 (1) The name and address of record of the defendant;
31 (2) The file number of each case in which the
32 defendant's appearance is secured by the bail bond;
33 (3) The amount of the bail bond;
34 (4) The date on which the bail bond was executed;
35 (5) The name and address of record of each surety on
36 the bail bond;
37 (6) The name, address of record, license number and
38 power of appointment number of any bail agent who
39 executed the bail bond on behalf of an insurance
40 company;
41 (7) The date on which the provisional judgment is
42 entered;

- 1 (8) The date on which the provisional judgment will
2 become final pursuant to G.S. 15A-544.6 if not set
3 aside before that date; and
- 4 (9) The following notice: 'TO THE DEFENDANT AND EACH
5 SURETY NAMED ABOVE: The defendant named above has
6 failed to appear as required before the court in
7 the case identified above. A provisional judgment
8 for the amount of the bail bond shown above was
9 entered in favor of the State against the defendant
10 and each surety named above on the date of
11 provisional judgment shown above. This provisional
12 judgment will be set aside if, on or before the
13 final judgment date shown above, satisfactory
14 evidence is presented to the court that one of the
15 following events has occurred: (1) the defendant's
16 failure to appear has been stricken by the court in
17 which the defendant was required to appear and any
18 order for arrest that was issued for that failure
19 to appear is recalled, (2) all charges for which
20 the defendant was bonded to appear have been
21 finally disposed by the court other than by the
22 State's taking a voluntary dismissal with leave,
23 (3) the defendant has been surrendered by a surety
24 or bail agent to a sheriff of this State as
25 provided by law, or (4) the defendant has been
26 served with an Order for Arrest for the Failure to
27 Appear on the criminal charge in the case in
28 question. The provisional judgment will not be set
29 aside for any other reason. If this provisional
30 judgment is not set aside on or before the final
31 judgment date shown above, and if no motion to set
32 it aside is pending on that date, the judgment will
33 be come final on that date. The final judgment
34 will be enforceable by execution against the
35 defendant and any accommodation bondsman and
36 professional bondsman on the bond. The final
37 judgment will also be reported to the North
38 Carolina Department of Insurance. Further, no
39 surety will be allowed to execute any bail bond in
40 the above county until the final judgment is
41 satisfied in full.'
- 42
- 43 §15A-544.4 Notice of provisional judgment.

1 (a) The court shall give notice of the entry of provisional
2 judgment by mailing a copy of the provisional judgment to the
3 defendant and to each surety and bail agent whose name appears on
4 the bail bond.

5 (b) The notice shall be sent by first class mail to the
6 defendant and to each surety named on the bond at the surety's
7 address of record.

8 (c) If the bond was executed by a bail agent on behalf of an
9 insurance company, the court shall also provide a copy of the
10 provisional judgment to the bail agent, but failure to provide
11 notice to the bail agent shall not affect the validity of any
12 notice given to the insurance company.

13 (d) Notice given pursuant to this section shall be effective
14 when the notice is mailed.

15 (e) Notice pursuant to this section shall be mailed not later
16 than the thirtieth day after the date on which the provisional
17 judgment is entered. If notice pursuant to this section is not
18 given within the prescribed time, the provisional judgment shall
19 not become final, and shall not be enforced or reported to the
20 Department of Insurance.

21
22 §15A-544.5. Setting aside provisional judgment of forfeiture.

23 (a) Relief exclusive. -- There shall be no relief from a
24 provisional judgment except as provided in this section. The
25 reasons for relief are those specified in subsection (b) of this
26 section. The procedures for obtaining relief are those specified
27 in subsections (c) and (d) of this section. The provisions of
28 subsections (f), (g), (h) and (i) of this section apply
29 regardless of the reason for relief given or the procedure
30 followed.

31 (b) Reasons for set aside. -- A provisional judgment shall be
32 set aside for any one of the following reasons, and none other:

33 (1) The defendant's failure to appear has been set
34 aside by the court and any order for arrest issued
35 for that failure to appear has been recalled, as
36 evidenced by a copy of an official court record,
37 including an electronic record;

38 (2) All charges for which the defendant was bonded to
39 appear have been finally disposed by the court
40 other than by the State's taking dismissal with
41 leave, as evidenced by a copy an official court
42 record, including an electronic record;

43 (3) The defendant has been surrendered by a surety on
44 the bail bond as provided by G.S. 15A-540, as

- 1 evidenced by the sheriff's receipt provided for in
2 that section; or
- 3 (4) The defendant has been served with an Order for
4 Arrest for the Failure to Appear on the criminal
5 charge in the case in question.
- 6 (c) Procedure when failure to appear is stricken. -- If the
7 court before which a defendant's appearance was secured by a bail
8 bond enters an order striking the defendant's failure to appear
9 and recalling any order for arrest issued for that failure to
10 appear, that court may simultaneously enter an order setting
11 aside any provisional judgment of the forfeiture of that bail
12 bond. When an order setting aside a provisional judgment of the
13 forfeiture of the bail bond is entered, the defendant's further
14 appearances shall continue to be secured by that bail bond unless
15 the court orders otherwise.
- 16 (d) Motion Procedure. -- If a provisional judgment is not set
17 aside pursuant to subsection (c) of this section, the only
18 procedure for setting it aside shall be as follows:
- 19 (1) At any time before the expiration of one hundred
20 fifty (150) days after the date on which notice was
21 given pursuant to G.S. 15A-544.4, the defendant or
22 any surety on a bail bond may make a written motion
23 that the provisional judgment be set aside, stating
24 the reason and attaching the evidence specified in
25 subsection (a) of this section.
- 26 (2) The motion shall be filed in the office of the
27 clerk of superior court of the county in which the
28 provisional judgment was entered, and a copy shall
29 be served, pursuant to GS. 1A-1, Rule 5, on the
30 district attorney for that county and the county
31 board of education.
- 32 (3) Either the district attorney or the county board of
33 education may object to the motion by filing a
34 written objection in the office of the clerk and
35 -serving a copy on the moving party.
- 36 (4) If neither the district attorney nor the board of
37 education has filed a written objection to the
38 motion by the tenth day after the motion is served,
39 the clerk shall enter an order setting aside the
40 provisional judgment.
- 41 (5) If either the district attorney or the county board
42 of education files a written objection to the
43 motion, then not more than thirty days after the
44 objection is filed a hearing on the motion and

- 1 objection shall be held in the county, in the trial
2 division in which the defendant was bonded to
3 appear.
- 4 (6) If at the hearing the court allows the motion, the
5 court shall enter an order setting aside the
6 provisional judgment.
- 7 (7) If at the hearing the court does not enter an order
8 setting aside the provisional judgment, the
9 provisional judgment shall become a final judgment
10 of forfeiture on the later of:
- 11 a. the date the hearing; or
12 b. the date of final judgment specified in
13 G.S. 15A-544.6.
- 14 (f) Only one motion per provisional judgment. -- No more than
15 one motion to set aside a specific provisional judgment may be
16 considered by the court.
- 17 (g) No more than two provisional judgments may be set aside
18 per case. -- In any case in which the State proves that the
19 surety or the bail agent had notice or actual knowledge, before
20 executing a bail bond, that the defendant had already failed to
21 appear on two or more prior occasions, no provisional judgment of
22 forfeiture of that bond may be set aside for any reason.
- 23 (h) No final judgment after provisional judgment is set aside.
24 -- If a provisional judgment is set aside pursuant to this
25 section, the provisional judgment shall not thereafter ever
26 become a final judgment of forfeiture or be enforced or reported
27 to the Department of Insurance.
- 28 (i) Appeal. -- An order on a motion to set aside a provisional
29 judgment shall be a final order or judgment of the trial court
30 for purposes of appeal. Appeal shall be as provided for appeals
31 in civil actions. When notice of appeal is properly filed, the
32 court may stay the effectiveness of the order on such conditions
33 as the court deems appropriate.
- 34
- 35 §15A-544.6. Final judgment of forfeiture.
- 36 A provisional judgment of forfeiture entered pursuant to G.S.
37 15A-544.3 becomes final judgment of forfeiture without further
38 action by the court, and may be enforced pursuant to G.S. 15A-
39 544.7, on the one hundred fiftieth day after notice is given
40 pursuant to G.S. 15A-544.4, if:
- 41 (1) No order setting aside the provisional judgment
42 pursuant to G.S. 15A-544.5 is entered on or before
43 that date; and

1 (2) No motion to set aside the provisional judgment is
2 pending on that date.

3
4 §15A-544.7. Docketing and enforcement of final judgment of
5 forfeiture.

6 (a) Final judgment docketed as civil judgment. -- When a
7 provisional judgment has become a final judgment pursuant to this
8 Part, the clerk of superior court, pursuant to G.S. 1-234, shall
9 docket the judgment as a civil judgment against the defendant and
10 against each surety named in the judgment.

11 (b) Judgment lien. -- When a final judgment of forfeiture is
12 docketed, the judgment shall become a lien on the real property
13 of the defendant and of each surety named in the judgment, as
14 provided in G.S. 1-234.

15 (c) Execution; copy to Commissioner of Insurance. -- After
16 docketing a final judgment pursuant to this section, the clerk
17 shall:

18 (1) Issue execution on the judgment against the
19 defendant, and against each accommodation bondsman
20 and professional bondsman named in the judgment,
21 and shall remit the clear proceeds to the county
22 finance officer as provided in G.S. 115C-452; and

23 (2) If an insurance company or professional bondsman is
24 named in the judgment, send the Commissioner of
25 Insurance a copy of the judgment, showing the date
26 on which the judgment was docketed.

27 (d) Sureties may not execute bonds in county. -- After a
28 final judgment is docketed as provided in this section, no surety
29 named in the judgment shall become a surety on any bail bond in
30 the county in which the judgment is docketed until the judgment
31 is satisfied in full.

32
33 §15A-544.8. Relief from final judgment of forfeiture.

34 (a) Relief exclusive. -- There shall be no relief from a
35 final judgment of forfeiture except as provided in this section.

36 (b) Reasons. -- The court may grant the defendant or any
37 surety named in the judgment relief from the judgment, for the
38 following reasons, and none other:

39 (1) The person seeking relief was not given notice as
40 provided in G.S. 15A-544.4; or

41 (2) Other extraordinary circumstances exist that the
42 court, in its discretion, determines should entitle
43 that person to relief.

1 (c) Procedure. -- The procedure for obtaining relief from a
2 final judgment pursuant to this section shall be as follows:

3 (1) At any time before the expiration of three years
4 after the date on which a judgment of forfeiture
5 became final, the defendant or any surety named in
6 the judgment may make a written motion for relief
7 under this section, stating the reasons and setting
8 forth the evidence in support of each reason.

9 (2) The motion shall be filed in the office of the
10 clerk of superior court of the county in which the
11 final judgment was entered, and a copy shall be
12 served, pursuant to G.S. 1A-1, Rule 5, on the
13 district attorney for that county and the county
14 board of education.

15 (3) A hearing on the motion shall be scheduled within a
16 reasonable time in the trial division in which the
17 defendant was bonded to appear.

18 (4) At the hearing the court may grant the party any
19 relief from the judgment that the court considers
20 appropriate, including the refund of all or a part
21 of any money paid to satisfy the judgment.

22 (d) Only one motion. -- No more than one motion by any party
23 for relief under this section may be considered by the court.

24 (e) Finality of judgment as to other parties not affected. --
25 The finality of a final judgment of forfeiture shall not be
26 affected, as to any party to the judgment, by the filing of a
27 motion by, or the granting of relief to, any other party.

28 (f) Appeal. -- An order on a motion for relief from a final
29 judgment of forfeiture shall be a final order or judgment of the
30 trial court for purposes of appeal. Appeal shall be as provided
31 for appeals in civil actions. When notice of appeal is properly
32 filed, the court may stay the effectiveness of the order on such
33 conditions as it considers appropriate."

34 Section 6. G.S. 58-71-25 reads as rewritten:
35 "§ 58-71-25. Procedure for surrender; exoner⁴ation of obligors;
36 refund of deposit.

37 ~~The person desiring to make a surrender of the defendant shall~~
38 ~~procure a certified copy of the undertakings and deliver them~~
39 ~~together with the defendant to the official in whose custody the~~
40 ~~defendant was at the time bail was taken, or to the official into~~
41 ~~whose custody he would have been given had he been committed, who~~
42 ~~shall detain the defendant in his custody thereon, as upon a~~
43 ~~commitment, and by a certificate in writing acknowledge the~~
44 ~~surrender.~~

~~1 Upon the presentation of certified copy of the undertakings and
2 the certificate of the official, the court before which the
3 defendant has been held to answer, or the court in which the
4 preliminary examination, warrant, indictment, information or
5 appeal as the case may be, is pending, shall upon notice of three
6 days given by the person making the surrender to the prosecuting
7 officer of the court having jurisdiction of the offense, together
8 with a copy of the undertakings and certificate, order that the
9 obligors be exonerated from liability of their undertakings, and,
10 if money or bonds have been deposited as bail, that such money or
11 bonds be refunded.~~

12 After there has been a breach of the undertaking in a bail
13 bond, the surety may surrender the defendant as provided in G.S.
14 15A-540."

15 Section 7. G.S. 24-5(a1) reads as rewritten:

16 "(a1) In an action on a penal bond, the amount of the judgment,
17 except the costs, shall bear interest at the legal rate from the
18 date of entry docketing of judgment until the judgment is
19 satisfied."

20 Section 8. There is appropriated to the Judicial
21 Department in the Current Operations Budget for the 2000-2001
22 fiscal year, the sum of _____ to be used for temporary
23 personnel, contract programming and training to implement the
24 provisions of this Act.

25 Section 9. This act becomes effective January 1, 2001,
26 and applies to all bail bonds executed and all forfeiture
27 proceedings initiated on and after that date.

Analysis of Legislative Proposal #2

99-RVZ-002

A BILL TO BE ENTITLED AN ACT TO MODERNIZE THE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

Section 1. substantially amends the definitions section in §G.S. 15A-531. This Section adds definitions for the terms "Accommodation bondsman," "Address of record," "Bail Agent," "Defendant," "Insurance Company", and "Professional bondsman." The definitions for "Accommodation bondsman" and "Professional bondsman", were taken verbatim from the definitions found in the Insurance chapter, G.S. §58-71-1. This section deletes the definition for "obligor" and rewrites the definition for "surety." This section also deletes the term "principal" and substitutes the term "defendant." In the statutes affected by the bill, wherever the term is found, "principal" is substituted with the term "defendant."

Section 2. changes the section name and rewrites G.S. §15A-540. This section sets forth the procedures to be followed when a bondsman surrenders a defendant before or after a breach of bail bond conditions. This section also sets forth new conditions of pretrial release when a bondsman surrenders a defendant after the defendant has breach a condition of bail by failing to appear. This section allows the judicial official (usually a magistrate) to double the previous bond and to impose restrictions on the defendant's travel, associations, conduct or residence. This section also directs the magistrate to indicate on the release order that the defendant was surrendered after failing to appear as required by a previous release order.

Section 3 repeals G.S. §15A-544 which contains bail bond forfeiture procedures.

Section 4. changes the heading for General Statutes, Chapter 15A, Article 26, which will be divided into two parts, by adding the heading "Part 1. Bail."

Section 5. follows the above section by adding the heading "Part 2. Bail Bond Forfeiture." This new Part 2 creates several new statute sections that provide reworked bail bond forfeiture procedures. These new sections are intended to clarify and simplify current statutory language.

New §15A-544.1 makes both the defendant and each surety bound to the jurisdiction of the court without the necessity of any independent action. New section 15A-544.2 lists the required identifying information to be placed on a bail bond and identifies what will occur if the information is incomplete. New section 15A-544.3 provides that a provisional judgment will be entered against the defendant and the bondsman if the defendant fails to appear before a court as required by the bail bond. This section further lists all the information that must be contained in the notice of the provisional judgment. New section 15A-544.4 provides the mailing procedures to be followed for giving notice of a provisional judgment to the defendant and each surety and bail agent whose name appears on a bail bond. In particular, if the bond was executed by a bail agent on behalf of an insurance company, notice of the provisional judgment will be provided to both the insurance company and the bail agent.

New section §15A-544.5 sets forth the reasons for which a provisional judgment shall be set aside. A provisional judgment may be set aside if (1) the defendant's failure to appear (FTA) has been set aside by the court and any order for arrest (OFA) issued for that failure to appear has been recalled; or (2) all charges for which the defendant was bonded to appear have been finally disposed of by the court other than by the State's taking dismissal with leave; or (3) the defendant has been surrendered by a surety on the bail bond; or (4) the defendant has been served with an OFA for the FTA on the criminal charge. This section provides the procedures to follow when a OFA based on a FTA is stricken and the procedures for filing motions and holding hearings on whether to set aside a provisional judgment. In cases where the surety or bail agent had notice or actual knowledge, prior to executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment may be set aside. Finally, this section sets forth the rules for appealing an order on a motion to set aside a provisional judgment.

New section §15A-544.6 provides the rules for when a provisional judgment of forfeiture becomes a final judgment. New section 15A-544.7 sets forth when a final judgment may be docketed as a civil judgment and become a lien against the real property of the defendant and each surety named in the judgment. New section 15A-544.7 further provides the rules for execution of a final forfeiture judgment. Until the final judgment is satisfied, sureties may not continue issue bonds in the county in which the judgment is docketed.

New section §15A-544.8 sets forth the reasons relief from a final judgment of forfeiture may be had. These include the lack of proper notice to necessary parties or other extraordinary circumstances. This section sets a three year statute of limitations for a defendant or surety to seek relief from a final judgment of forfeiture. It further provides the rules for motions and appeals.

Section 6. amends and simplifies G.S. §58-71-25 from the Insurance chapter, which governs the procedure for a surety to surrender a defendant, by adopting the process found in the rewritten G.S. §15A-540.

Section 7. amends G.S. §24-5(a1), which covers interest on judgments, by making the interest calculation be based on the date of judgment docketing rather than the date of judgment entry.

Section 8. requests a special appropriation to the Judicial Department to be used for temporary personnel, contract programming an training to implement bill's provisions.

Section 9. sets the bill's effective date as January 1, 2001.

APPENDIX F

Bail Bond Laws Committee Membership

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